

FILED

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CHARLES ELMORE COOPLY  
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

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**No. 380**

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IN THE MATTER OF GEORGE F. NORD BUILDING CORPORATION.

B. A. KAUSAL,

*Petitioner,*

vs.

79TH AND ESCANABA CORPORATION,

A CORPORATION,

*Respondent.*

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT, AND BRIEF IN  
SUPPORT THEREOF.**

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*To the Honorable Harlan F. Stone, Chief Justice of the  
United States and the Associate Justices of the  
Supreme Court of the United States:*

Your petitioner respectfully shows:

## I.

**SUMMARY STATEMENT OF THE MATTER INVOLVED.**

In the reorganization of the George F. Nord Building Corporation under Section 77B of the Bankruptcy Act, as then amended, the District Court subsequent to the entry of the decree of confirmation entered an order restraining all persons from sending any general written communication to the creditors of the Debtor or to the shareholders of the 79th and Escanaba Corporation, a corporation newly organized to take over the Debtor's assets, without first having such communication approved by the Court (Rec. 37). A communication was sent out to the shareholders of the 79th and Escanaba Corporation by appellant and others without first so submitting it to the Court and on the petition of the 79th and Escanaba Corporation for a rule on appellant to show cause why he should not be punished for contempt and after a hearing on the petition the court ordered appellant "re-manded to the United States Marshal for confinement in a jail for 30 days".

The restraining order alleged to have been violated and which was entered on June 11, 1940, contained the following provision:

"It is further ordered that all persons be and they hereby are restrained and enjoined from sending any general written communication to the creditors of the Debtor or the shareholders of the 79th and Escanaba Corporation without first having such communications approved by this court."

A decree of confirmation had been entered in the proceedings on January 23, 1939 and all of the assets of the Debtor's property had been conveyed on June 1, 1939

(Rec. 42 (3) ) so that the restraining order in question was not entered until a period long subsequent to the entry of the decree of confirmation and the divestiture of the debtor's property from the jurisdiction of the bankruptcy court. There was no specific reservation of power in the decree of confirmation to enter the restraining order in question but only the general reservation of power to enter such orders as may be deemed necessary or advisable in connection with the carrying out of the terms and provisions of said amended plan of reorganization (Rec. 2 through 12).

The contempt order appealed from was not entered until June 27, 1941 (Rec. 59).

The contempt proceedings were instituted by the petition of the 79th and Escanaba Corporation (Rec. 59) for a rule on respondent B. A. Kausal, and others, to show cause why they should not be punished for contempt for sending out a communication to its stockholders and the original bondholders without first submitting the communication for approval to the Court. It will be noted that the 79th and Escanaba Corporation was a successor to the Debtor corporation in the reorganization proceedings and was not itself an original party to said proceedings. Evidence was taken on the "show cause" petition and the answer thereto and the District Court found the respondent guilty of contempt and sentenced him to thirty days' confinement in jail. On appeal to the United States Circuit Court of Appeals for the Seventh Circuit the order of the District Court was affirmed (Rec. 77). The main issues in the Appellate Court were that the court lacked jurisdiction to enter the restraining order in that: (a) the decree of confirmation terminated the Court's jurisdiction over the matters in controversy except as to the powers specifically reserved in said decree, and (b)

the court had no jurisdiction over property or the administration thereof which was no longer the Debtor's, and that the restraining order itself was a nullity in that it restricted the right of the freedom of speech and writing.

## II.

### REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The decision of the Circuit Court of Appeals is in conflict with decisions in other jurisdictions as to the effect of the decree of confirmation in a corporate reorganization proceeding. The decision of the Circuit Court of Appeals is tantamount to holding that the decree of confirmation does not end the court's jurisdiction to consider matters *de hors* the plan of reorganization and this holding is in conflict with the holdings in other jurisdictions on said question.

*In Re Camden Rail & Harbor Terminal Corporation*, 35 Fed. Supp. 862-867 (DCNJ).

2. The effect of a decree of confirmation in a corporate reorganization proceeding needs clarification. If such decree has all the attributes of finality that a decree in equity possesses then it is more than just one step in a proceeding and in such case the judgment of the Circuit Court of Appeals is erroneous.

3. The decision of said Circuit Court of Appeals is in conflict with two decisions in the Second Circuit which hold that upon conveyance of the Debtor's property where such property was no longer *in custodia legis* the bankruptcy court's power to enjoin was terminated.

*In re Prudence-Bonds Corp.*, 77 Fed. (2d) 328, 330 (CCA2); Cert. denied 296 U. S. 584

*In re Adolph Goebel, Inc.*, 80 Fed. (2d) 849, 852 (CCA 2).



4. The restraining order entered violates the provisions of the Federal and Illinois State Constitutions guaranteeing to every citizen the right of free speech and writing.

Art. II Sec. 4 of the Illinois Constitution, Smith-Hurd Ill. Anno. Statutes, Vol. on Constitution, page 286

Article V of the U. S. Constitution  
16 Corpus Juris Secundum, 628  
83 A. L. R. 193.

Wherefore your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court had in the case numbered and entitled on its docket, No. 7883, *In the Matter of George F. Nord Building Corporation, Debtor, B. A. Kausal, Appellant v. 79th and Escanaba Corporation, a corp., Appellee*, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court be reversed by the court, and for such further relief as to this Court may seem proper.

Dated September 2, 1942.

-----  
CHARLES BUSHNELL FULLERTON,  
*Counsel for Petitioner.*

HAROLD V. SNYDER,  
Of Counsel.



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**BRIEF IN SUPPORT OF PETITION FOR  
WRIT OF CERTIORARI.**

---

**I.**

**OPINIONS OF COURTS BELOW.**

No opinion was rendered by the District Court for the Northern District of Illinois, Eastern Division, except as to the findings set forth in full in the record at pages 59 and 60. The opinion of the Circuit Court of Appeals for the Seventh Circuit is copied at pages 72 to 76 of the record and is reported in 129 Fed. (2d) 173.

## II.

## JURISDICTION.

The opinion of the Circuit Court of Appeals was filed June 25, 1942. The statutory provision which is believed to sustain the jurisdiction of this Court is Section 240-A of the Judicial Code as amended by the Act of February 13, 1925 (U. S. C. A., Sec. 347-A). The jurisdiction of this Court to review the cause by certiorari is sustained by:

*Magnam v. Coty*, 262 U. S. 159, 162

*Forsyth v. Hammond*, 166 U. S. 506

(Conflict between decisions of Circuit Court of Appeals and a State Constitution)

## III.

## STATEMENT OF THE CASE.

This is an application for a writ of certiorari for a review of the decree of the U. S. Circuit Court of Appeals for the Seventh Circuit affirming an order of the U. S. District Court for the Northern District of Illinois, Eastern Division.

The material facts and the questions involved are set forth in the preceding petition under I (pages 2-4) which is hereby adopted and made a part of this brief.

The question for decision is whether a restraining order which restrains all persons from communicating with the bondholders of the debtor corporation or the stockholders of its successor corporation without first submitting such communications for approval to the court is a violation of free speech under the Federal and Illinois

State Constitutions, and whether the Court had power to enter such an order where it patently was unnecessary for carrying out any plan of reorganization after it had entered a decree of confirmation in the proceedings.

#### IV.

#### **SPECIFICATION OF ERRORS.**

The Circuit Court of Appeals erred:

1. In disregarding petitioner's reliance on the point that the jurisdiction of a court of bankruptcy to enter a restraining order prohibiting communications to be sent to bondholders of a reorganized corporation or stockholders of the successor corporation without first submitting such communications for approval to the court, was terminated by the entry of the decree of confirmation.

2. In not finding that the restraining order in question was on its face non-essential to the carrying out of a plan of reorganization and that therefore such restraining order was without the powers of the court to enter after a confirmatory decree.

3. In holding that the court did not lack jurisdiction to enter the restraining order after the property of the debtor had passed to the new corporation.

4. In holding that the restraining order in question did not violate the right of free speech.

5. In affirming the order of the District Court.

## V.

**ARGUMENT.**

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**Summary of the Argument.****Point A.**

A decree of confirmation entered in a corporate reorganization proceeding terminates the court's jurisdiction to consider any matter not specifically reserved in said decree or not necessary for the carrying out of the plan of reorganization.

**Point B.**

Conveyance of the debtor's property to a new corporation divests the court of jurisdiction to enter any restraining order unless such right was reserved in the decree of confirmation because a bankruptcy court under a reorganization proceeding has jurisdiction only over the debtor and its property.

**Point C.**

A restraining order which prohibits all persons from sending any general written communications to the creditors of the debtor corporation or the shareholders of the newly formed corporation which was the successor of the debtor, violates the right of the freedom of speech and writing guaranteed to each citizen by the Federal and Illinois State Constitutions.

**Point D.**

Where the restraining order violated is unconstitutional appellant could not legally be held in contempt for its violation.

**Point A.**

In a corporate reorganization proceeding a decree of confirmation terminates the Court's jurisdiction to consider any matters *de hors* the plan of reorganization.

The order restraining all persons from communicating with the bondholders of the debtor corporation or the stockholders of the successor corporation is on its face non-essential to the carrying out of any plan of reorganization. Communicating with those classes of people could neither interfere with nor aid any plan. That being true it cannot be argued that the restraining order was an essential step to carrying out the plan of reorganization. It is only the establishment of such contention that would confer upon the court jurisdiction to enter such order subsequent to the confirmatory decree.

Not only was the restraining order patently unnecessary to the carrying out of the plan of reorganization whatever that plan might be but the decree of confirmation itself made no reservation to enter any such type of order (Rec. 2 and 12).

According to the decisions in other jurisdictions the confirmatory decree concludes the court's jurisdiction except as to matters specifically reserved in it, or which are essential to the carrying out of the plan of reorganization.

*Consolidated Gas Elec. L. & P. Co. v. United Railways & Elec. Co.*, 85 Fed. (2d) 799, 801, 802, 803 (CCA 4, Cert. den. 57 Sup. Ct. 493)

*In Re Camden Rail & Harbor Terminal Corp.*, 35 Fed. Supp. 862, 867 (DCNJ).

**Point B.**

**A Court of Bankruptcy has no jurisdiction to enter a restraining order after the debtor's property has been conveyed to a new corporation, so that it was no longer *in custodia legis*.**

On June 1, 1939, the Court ordered the Trustee to convey the property of the Debtor to a new corporation, the 79th and Escanaba Corporation (Rec. 14). This conveyance was made and the Trustee's Deed recorded on June 7, 1939 (Rec. 42 (3) ). Upon the conveyance out the Debtor had no property and the court lost jurisdiction. Sec. 77B (a) provides that the court shall have exclusive jurisdiction of the Debtor and its property. Even the petition on appellant for a rule to show cause was the petition of the new corporation and not of the Debtor and the order holding him in contempt so recited (Rec. 59). Upon the conveyance of the Debtor's property it was no longer *in custodia legis* and the Bankruptcy Court's power to enjoin was terminated. The Bankruptcy Court only has jurisdiction over the debtor and its property.

*In re Adolph Goebel, Inc.*, 80 Fed. (2d) 849, 852 (CCA 2)

*In re Lake's Laundry, Inc.*, 79 Fed. (2d) 326 (CCA 2).

The court was without authority to enter the order then not only because it had no jurisdiction over the property subsequent to its conveyance out from the Debtor, but also because the decree confirming the plan of reorganization as amended divested it of powers to restrain communications under any conditions to the shareholders of the new corporation, there being no reservations of such powers in the decree.



### Point C.

The restraining order violated was a nullity in that it restricted the right of the freedom of speech and writing.

The order for which appellant was adjudged in contempt provides that:

“\* \* \* all persons be and they hereby are restrained and enjoined from sending any general written communication to the creditors of the Debtor or the shareholders of the 79th & Escanaba Corporation without first having such communications approved by this court” (Rec. 37).

Article II, Sec. 4 of the Illinois Constitution, Smith-Hurd Ill. Anno. Statutes, Vol. on Constitution, Page 286, provides that: “Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty; \* \* \*”. The order of the District Court in our case prohibits anyone from freely writing on all subjects. It will be noticed the order is neither limited in time nor subject matter. The purpose of the order must be left to mere conjecture. The order covers “all persons”.

The view has even been taken that a Judge's order is tantamount to a law so as to come within the sections of the State and Federal Constitutions prohibiting the passing of any law restraining the freedom of speech including the Fifth Amendment to the Federal Constitution.

16 *Corpus Juris Secundum*, 628

83 A. L. R. 193.

Where the restraining order violated is a nullity one cannot be held in contempt for its violation.

*Federal Trade Commission v. Fairyfoot Products Co.*, 94 Fed. (2d) 844, 845 (CCA 7)

*Beauchamp v. U. S.*, 76 Fed. (2d) 663 (CCA 9).

**CONCLUSION.**

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, by granting a writ of certiorari and thereafter reviewing and reversing said decision.

Respectfully submitted,

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Of Counsel.





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CHARLES ELMORE COOPLEY  
CLERK

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B. A. KAUSAL,

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79TH AND ESCANABA CORPORATION,

*Respondent.*

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**BRIEF OF RESPONDENT IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI.**

---

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**BRIEF OF RESPONDENT IN OPPOSITION TO  
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**STATEMENT OF THE CASE.**

**I.**

**Opinions of Courts Below.**

The petitioner is in error when he states that no opinion was rendered by the District Court, except as set out in the record on pages 59 and 60. The record referred to by the petitioner is the order of the District Court. At the time this order was entered the Judge of the District Court read his opinion and it was incorporated in the transcript of evidence, and at the time the order was entered the Judge of the District Court made written findings of fact and conclusions of law, which are a part of the record in the District Court. Neither the transcript of the evidence nor the District Court's findings of fact

and conclusions of law, were brought up to the Circuit Court of Appeals, although the designation of record prepared by the petitioner, for the purpose of bringing the record in the District Court to the Circuit Court of Appeals, specified at the time it was served upon the attorney for the respondent that such record would include the transcript of the evidence, but thereafter, the petitioner's attorneys instructed the Clerk of the District Court, to exclude the transcript of evidence from the record on appeal, without notifying the attorney for the respondent. However, under the view taken of this matter by the respondent, the opinion of the District Court is not now material on the petition for writ of certiorari.

## II.

### Jurisdiction.

The petitioner apparently realizes that the only possible grounds upon which he could sustain his petition for a writ of certiorari, is upon the theory that the Supreme Court of the United States will review a decision of the Circuit Court of Appeals in the event the Circuit Court of Appeals renders a decision in conflict with a decision of another Circuit Court of Appeals on the same subject. The principle is set out in the rules of Court and in the cases of *Magnum v. Coty*, 262 U. S. 159, and *Forsyth v. Hammond*, 166 U. S. 506, cited by the petitioner, but in the first mentioned of these cases at page 163 the Court says:

"The question how the court should exercise this power next arises. The jurisdiction to bring up cases for certiorari from the circuit courts of appeals was given for two purposes: first, to secure uniformity of decision between those courts in the nine circuits; and, second, to bring up cases involving questions of



importance which it is in the public interest to have decided by this court of last resort. The jurisdiction was not conferred upon this court merely to give the defeated party in the circuit court of appeals another hearing. Our experience shows that 80 per cent of those who petition for certiorari do not appreciate these necessary limitations upon our issue of the writ. When, therefore, after the petition is filed and before its submission, an application is made for a suspension of the judgment or decree of the circuit court of appeals, a heavy burden rests on the applicant."

And in the other case, the court said in effect, that while the court does not doubt its power it has been chary of actions in respect to certiorari, and the power will be sparingly exercised, and only exercised when it is satisfied of necessity of avoiding conflict between two or more Courts of Appeal, or between Courts of Appeal and Courts of the State, or when there is some matter affecting the interest of the nation.

### III.

#### **Comments on Petitioner's Statement of the Case.**

The petitioner incorporates in his statement of the case pages 2 to 4 of his petition. In these pages of his petition the petitioner admits that he sent out a communication to the shareholders of the debtor successor without first submitting such communications to the court, as required by rule of court. He then sets out a portion of the order of June 11, 1940, restraining such communications. He did not, however, set out that part of the order of June 11, 1940, which shows that at the time the order of June 11, 1940 was entered, the cause came on to be heard for rule upon the petitioner to show cause why he should not

be held in contempt of court for violating a previous order of the court, entered on December 3, 1937; nor does the petitioner show that part of the order setting out that all parties of record, including the petitioner then on trial, consented to the entry of the order of June 11, 1940 (Tr. 37, 28).

The petitioner emphasizes that a decree, confirming the plan of reorganization, was entered on January 23, 1939 and that the debtor's property was conveyed on June 1, 1939 to its successor as provided in the Plan of Reorganization and the restraining order in question was entered thereafter on June 11, 1940. The petitioner wholly fails to state the fact that the matter was, for good cause, yet pending before the District Court and the final decree had not been entered and was not entered until the 28th day of April, 1941 (Tr. 45), and the final decree specifically reserved in the court the jurisdiction for the purpose of taking any action, steps or proceeding, which the court may from time to time deem necessarily advisable or proper against any person, for a violation of the order of June 11, 1940, based upon any acts or things done prior to the entry of the final decree and, particularly, the pending contempt proceedings against petitioner, Benedict A. Kausal for violation of the injunction order entered on June 11, 1940.

The petitioner, without reason, confuses the effect of a decree of confirmation with the final decree, and does not take into consideration those provisions of the statute then in force, known as Section 77B of the Bankruptcy Act, as amended, especially the part thereof, outlining the jurisdiction and duties of the District Court, to proceed after the decree confirming the plan, to complete the reorganization and make the plan effective, as set out in 77B (h) U. S. C. A. Title 11, page 1067, Sec. 207, and 77B (c) (10) U. S. C. A. Title 11, page 1063, Sec. 207.

Apparently the petitioner is laboring under the misapprehension that he was being punished for interfering with assets of the debtor corporation, after these assets had been conveyed in keeping with the plan of reorganization, whereas, as a matter of fact and law, the petitioner was sentenced to punishment for interfering with the orderly procedure of the court. That the court has power to protect itself and prevent disturbance of its procedure, is so elementary, as to need no comment.

#### **Reasons Relied Upon for the Denial of the Writ.**

The petitioner contends that the decision of the Circuit Court of Appeals is in conflict with the decisions in other jurisdictions, as to the effect of an order confirming a plan of reorganization; and in support of this contention, he cites a District Court case. Apparently, the petitioner has overlooked the provisions of Rule 38 (5) (b) of this Court and the two decisions of this Court referred to above under the title "Jurisdiction," from which it clearly appears that that conflict of decisions with which the United States Supreme Court may concern itself, is not a conflict between decisions of the District Courts of the United States, but a conflict between decisions of the Circuit Court of Appeals in the various Circuits and the petitioner had not referred to any Circuit Court of Appeal, decisions contrary to the opinions of the Circuit Court of Appeals in this case.

The petitioner states that the effect of a decree of confirmation in a corporate reorganization proceeding, needs clarification. However, under those sections of 77B of the Bankruptcy Act, hereinbefore referred to, it is quite apparent that the decree confirming the plan of reorganization is not a final decree as it does not complete the court's work, nor its duties. The court is under a duty and has the jurisdiction to take a number of steps after the entry

of the decree confirming a plan, before it loses jurisdiction and before its work is done, and it is elementary that as long as a matter is lawfully in court, or as long as a court has any function to perform, the court may protect itself by an injunction order from interference with its procedure and the orderly conduct of the case. This continuing jurisdiction has been recognized in numerous cases.

At this point the petitioner refers to two decisions of the Circuit Court of Appeals of the Second Circuit, which he says are in conflict with a decision of the Circuit Court of Appeals in this matter. The one case *In re Prudence-Bonds Corporation*, 77 Fed. (2d) 328. In this case the order appealed from, restrained the appellants from foreclosing, selling or encumbering, the mortgages made by the debtor and pledged with the appellants, or from distributing the cash on hand to bondholders or to the trustees, or to their agents, except upon application to the District Court. The court referred to Section 77B of the Bankruptcy law, providing that the court shall, during the pendency of the proceedings under that section, have exclusive jurisdiction of the debtor and its property, wherever located, and the court said that the court had jurisdiction of the debtor's property through all the intermediate steps of reorganization; and to permit the untrammelled right of the appellants to foreclose underlying mortgages, may well destroy the equities in the pledged property and embarrass the reorganization of the collateral thus held. It might destroy all chances of reorganization, and therefore the order appealed from was confirmed.

*In re Adolph Goebel, Inc.*, 80 Fed. (2d) 849, the other case cited by the petitioner in this connection, an order was entered restraining an action against an Iowa corporation, the common stock of which was subsequently owned by the debtor in reorganization. The court held in substance

that the law did not authorize enjoining a creditor of a solvent and wholly independent subsidiary from prosecuting an action at law, in a state court, merely because its common stock is held by the debtor in reorganization. Neither of these cases are upon the same subject as the decision of the Circuit Court of Appeals in this matter. The *Prudence-Bonds Corporation* case, however, clearly supports the court's jurisdiction in this case.

The petitioner contends that the restraining order violates the provisions of the Federal and Illinois State Constitutions, guaranteeing to every citizen the right of free speech and writing and cites 16 Corpus Juris Secundum 628, which does not support the petitioner's contention; that authority making it clear that the right to freedom of speech and writing is not an absolute license to speak or publish anything that one pleases free of all legal liability therefor. This subject, as well as all the other contentions of the petitioner, is set forth and answered in the opinion of the Circuit Court of Appeals found in the transcript of the record herein (Tr. 72 to 76).

#### IV.

##### Argument.

Having followed the petitioner's statement of the case, including his petition, which is incorporated by reference in the statement of the case, it appears that this statement itself, and the authorities cited therein, by the petitioner, defeats each and every contention of the petitioner set out in his argument.

Furthermore, the opinion of the Circuit Court of Appeals so ably and completely answers and disposes of every contention of the petitioner that it hardly behooves

us to attempt to improve upon that opinion, and it is quite sufficient at this point, to respectfully refer this court to the opinion of the Circuit Court of Appeals in this matter.

If further argument is necessary, we would say that the petitioner's statement under Point A of his argument, that in a corporate reorganization proceeding a decree of confirmation terminates the court's jurisdiction to consider any matters *de hors* the plan of reorganization, is a fallacy apparent upon the statement itself.

The case of *Consolidated Gas, Elec. L. & P. Co. v. United Railways & Elec. Co.*, 85 Fed. (2d) 799 cited by the petitioner holds in substance that the allowance of a claim after the confirmation of a plan of reorganization, may amount to altering the plan and that the court therefore could not allow the claim in question. In other words, the law contrary to the petitioner's statement, is that the court may not, except in certain cases, consider matters within the plan after the confirmation of the plan; but there are many matters outside of the plan which the court may and must consider after the order of confirmation is entered, in order to complete the reorganization of the corporation, and make the plan effective, as provided in Section 77B of the Bankruptcy Act, paragraphs (h) and 77B (c) (10) above referred to.

In a similar manner the statement of Point B of the petitioner, namely, that a court of bankruptcy had no jurisdiction to enter a restraining order after the debtor's property had been conveyed to a new corporation so that it is no longer in *custodia legis*, defeats itself, is contrary to sections of 77B (h) and 77B (c) (10) referred to above. As pointed out above, the case *In re Goebels, Inc.*, 80 Fed. (2d) 849, has no bearing upon the point, and likewise the case *In re Lake's Laundry, Inc.*, 79 Fed. (2d) 326, simply determines the right of a seller under a con-

ditional sales contract entered into with the debtor, prior to the reorganization, under paragraphs 77B of the Bankruptcy Act, holding that such rights are not impaired by the reorganization proceedings, this having nothing to do with the matter in question.

It would indeed, be an anomaly of the law, if, pursuant to the plan of reorganization, the court, as it did here, sanctioned the conveyance of the debtor's property as a step in carrying out the plan, it should be held that the court thereby lost jurisdiction of the proceeding, and was unable to complete the reorganization, and enter the final decree as required by Section 77B under which it was proceeding. It would also be an anomaly of the law if it should be held that a court having a duty to perform in a matter could not restrain one from interfering with the court's orderly performance of that duty; and such is the contention of the petitioner.

Under the final point of the petitioner's argument, he contends that the restraining order was a nullity in that it restrained the freedom of speech and writing. The principle that one is not obliged to obey an order of court that is an absolute nullity, is recognized; but an order of the court is never a nullity, when issued by a court of competent jurisdiction, and even though such order may be in error, it must be obeyed. The proper remedy of one wronged by such erroneous orders is not by disobedience but by appeal.

*In Re 4145 Broadway Hotel Co.* (7th Cir.), 100 Fed. (2d) 7, 8.

*Pacific Ry. v. Ketchum*, 101 U. S. 289; 25 L. Ed. 932.

*Swift & Co. v. U. S.*, 276 U. S. 311; 72 L. Ed 587.

*Brougham v. Oceanic Steam Navigation Co.*, 205  
Fed. 857, 860.

*Tornanses v. Melsing*, 106 Fed. 775, 788.

*Blake v. Nesbet*, 144 Fed. 279, 284.

*Smith v. Kimball*, 128 Ill. 583, 594.

4 C. J. 716, Para. 2631, also 717, Para. 2635.

*Brown v. U. S.*, 196 Fed. 351.

The restraining order did not unlawfully restrain the rights of freedom of speech and writing and this principle is clearly shown by the opinion of the Circuit Court of Appeals published in the transcript of record herein (Tr. 72 at page 75), and the authorities therein cited.

Therefore, it is respectfully submitted that as a matter of law this court should deny the petition for the writ of certiorari.

Respectfully submitted,

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